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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 893

UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

LOVE & AMOS COAL COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Court of Appeals of Tennessee, Middle Section.

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LOVE & AMOS COAL COMPANY,
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PETITION FOR WRIT OF CERTIORARI

To the Court of Appeals of Tennessee, Middle Section.

Petitioner, United Mine Workers of America ("UMW"), prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Tennessee, Middle Section, entered on July 26, 1963.[1]

[1] Subsequent to the entry of this judgment, UMW filed a petition for writ of certiorari in the Supreme Court of Tennessee. This petition was denied on December 9, 1963.

CITATIONS TO OPINIONS BELOW.

The unreported opinion of the Court of Appeals of Tennessee, Middle Section, is printed in Appendix B (1) hereto, *infra*, p. 18. The order of the Supreme Court of Tennessee denying UMW's petition for writ of certiorari is also unreported; it appears in Appendix B. (2) hereto, *infra*, p. 36.

JURISDICTION.

The Court of Appeals of Tennessee, Middle Section, entered its judgment on July 26, 1963. The Supreme Court of Tennessee denied UMW's petition for certiorari by order entered December 9, 1963.

UMW invokes the jurisdiction of this Court under 28 U. S. C. 1257 (3).

QUESTION PRESENTED.

If in the course of a labor dispute, marked in part by violence, a union commits acts that are arguably subject to Sections 7 and 8 of the National Labor Relations Act, may a state court, consistent with the preemption doctrine, assert jurisdiction of a damage action brought by the employer's sales agent, who is neither a party to the labor dispute nor involved in the acts of violence, and in so doing award treble damages, under a state statute, for the non-performance of the sales agent's contract with the employer.

STATUTE INVOLVED.

The statutory provisions involved are Sections 7 and 8 (b) (1) of the National Labor Relations Act, 61 Stat. 140, 29 U. S. C. 157 and 158 (b) (1), printed in Appendix A, *infra*, page 17.

STATEMENT.

Respondent, Love and Amos Coal Company ("Love and Amos"), is a Tennessee corporation which sells and distributes coal in the capacity of a sales agent. It is not a coal producer or operator.

On January 12, 1961, Love and Amos filed the present action against UMW in the Circuit Court for Davidson County, Tennessee, seeking damages under state law for alleged interference with its contractual relations.

The essential facts are these: In 1954, Love and Amos entered into a contract with Osborne Mining Company ("Osborne"), a coal producer which was then operating several mines in parts of Kentucky and Tennessee. Under this contract, Love and Amos agreed to sell all the coal produced by Osborne for a commission of .25 per ton (Transcript, Vol. V, p. 600).

In the same year, the Tennessee Valley Authority ("TVA") awarded Love and Amos a contract calling for the delivery of 500,000 tons of coal over a period of two years (Plaintiff's Exhibit 47). Pursuant to its contract with Love and Amos, Osborne was to produce all the coal needed to fulfill the TVA contract, as well as others.

Osborne operated on a non-union basis. In the years 1954-56, UMW was engaged in an extensive organizational campaign in southern Kentucky and eastern Tennessee; and Osborne, whose mines were located in that area, was among the operations which UMW was seeking to organize.

Violence occurred periodically during this campaign. On occasions there was mass picketing at the Osborne mine and preparation plant. There is proof in the record

that on one of these occasions, Osborne employees were told to join the Union, or Union members would return to the pit and the situation would not be peaceful. There is proof that on still other occasions, trucks carrying coal from the Osborne mine were stopped and the drivers harassed and intimidated (Transcript, Vol. I, pp. 42-48, Vol. II, pp. 176-179, Vol. V, pp. 614-620, Vol. VIII, pp. 911-915).

Love and Amos was not involved in UMW's organizational campaign or the violence which took place during the existence of that campaign. As the Sixth Circuit said in a previous case between UMW and Love and Amos (discussed below), **United Mine Workers of America v. Love and Amos Coal Company**, 279 F. 2d 716, 729-730 (6th Cir. 1960):

> "The labor dispute . . . was solely between U. M. W. and Osborne.
>
> ". . .
>
> "Love and Amos had no employees whom U. M. W. was attempting to organize, or for whom it was endeavoring to secure a collective bargaining agreement; U. M. W. did not induce or encourage any of Love & Amos' employees to strike in order to compel Osborne to bargain with U. M. W."

As a result of this campaign, Osborne's production decreased to the point that it ultimately became unable to meet the continuing requirements of the Love and Amos-TVA contract. And in September, 1955, with about 150,000 tons still undelivered, Love and Amos gave notice to TVA that it would have to terminate the contract.[2]

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[2] Osborne later brought an action against UMW in the United States District Court for the Eastern District of Tennessee. Therein, it claimed, and was awarded, substantial compensatory damages ($165,000) and punitive damages ($50,000) for acts

Before bringing this case, Love and Amos had sued UMW in a federal court action. Therein Love and Amos sought damages on the theory that UMW was guilty of committing an unlawful secondary boycott and of violating certain Tennessee statutes and that as a result it had lost commissions which it would have earned had the Union not prevented Osborne from producing enough coal to complete the TVA contract. Jurisdiction was based on Section 303 of the National Labor Relations Act ("Act").

At the conclusion of a non-jury case tried together with Osborne's (see footnote 2), the district court held that "Love and Amos Coal Company are entitled to compensatory damages sustained as a proximate and direct result of the wrongful acts [i. e., secondary boycott] of the defendants." 29 U. S. C. A. 187 (B) . . . "**Love and Amos Coal Company v. United Mine Workers of America et al.**, Civil No. 3167, E. D. Tenn. January 27, 1959, 38 C. C. H. Lab. L. Rep., par. 65, 741 at p. 67, 684." Love and Amos was awarded $35,000—the amount of commissions the district court found it had lost because of UMW's destruction of Osborne's business.

On appeal, the Sixth Circuit reversed and dismissed Love and Amos' action for lack of jurisdiction, **United Mine Workers of America v. Love and Amos Coal Company**, 279 F. 2d 716, 729 (6th Cir. 1960):

> "If Love & Amos were damaged as a result of any activities of defendants directed at it, an adequate remedy exists under state law. This is not the type of case contemplated by the Labor Management Act of 1947.

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which the district court found to be in violation of Section 303 of the National Labor Relations Act and the common law of Tennessee. This judgment was affirmed by the Sixth Circuit Court of Appeals, *United Mine Workers of America v. Osborne Mining Company*, 279 F. 2d 716 (6th Cir. 1960), *cert. den.* 364 U. S. 881 (1960).

"Jurisdiction cannot be sustained on the ground that, Love & Amos having failed in their federal cause of action, the District Court may nevertheless retain the case and administer the cause of action under the common law of the state."

Following the dismissal of its federal action, Love and Amos filed the present case in the Circuit Court for Davidson County, Tennessee.

The declaration contained two counts. In the first, Love and Amos sought compensatory and punitive damages on the basis of allegations that UMW had unlawfully caused the breach of its contract with Osborne in violation of the Tennessee common law. In the second, Love and Amos sought damages on the basis of a Tennessee statute, Tenn. Code Ann. 47-1706,[3] which provides for treble damages against any person who induces or procures the breach of a lawful contract. The central theme of both counts is that UMW's acts were intended to cause the non-performance of the Love and Amos-Osborne contract.

UMW's first pleading was a demurrer, asserting, inter alia, that the controversy came within the scope of Section 8 of the Act and was therefore within the exclusive jurisdiction of the National Labor Relations Board. Appendix C (1), *infra*, p. 38. The Circuit Court overruled

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[3] In full text, Tenn. Code Ann. 47-1706 reads as follows:

"It shall be unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of said contract; and the party injured by such breach may bring his suit for said breach and for such damages."

the demurrer by order dated April 21, 1961 (Transcript Vol. A, p. 54).

In its answer, UMW specifically raised the pre-emption defense based on Sections 7 and 8 of the Act. Appendix C (2), *infra*, p. 39.

The trial court held it had jurisdiction; and in an oral memorandum opinion, announced at the end of the case, it found that UMW had unlawfully caused a breach of the Love and Amos-Osborne contract.

The trial court held that Love and Amos was entitled to receive $60,000 compensatory damages under the first count, $36,024 of which was for commissions lost because of Osborne's cancellation of the TVA contract.

Under the second count, based on Tenn. Code Ann. 47-1706, the court held that UMW had violated the statute, and awarded Love and Amos $36,024 compensatory damages which it trebled to make $108,072.[4]

UMW moved for a new trial; one of the grounds being that jurisdiction over the subject matter had been pre-empted by Sections 7 and 8 of the Act. This motion was overruled by order dated November 30, 1962.

On appeal to the Court of Appeals of Tennessee, Middle Section ("Court of Appeals"), UMW raised the pre-emption question in its first assignment of error.

Relying on **United Automobile Workers v. Russell**, 356 U. S. 634 (1958) and **United Constr. Workers v. Laburnum**, 347 U. S. 656 (1954), the Court of Appeals overruled

[4] The judgment provided that the award on counts 1 and 2 should not be cumulative. All payments made in satisfaction of either count were to be credited against the payment made on the award with respect to the other count. Hence, in no event would Love and Amos be entitled to more than $108,072 under this judgment.

UMW's contention that the Labor Board had exclusive jurisdiction under the preemption doctrine and, after overruling all other assignments which are not material here, it affirmed the judgment of the trial court in its entirety. Judgment was entered July 26, 1963. Appendix B (3), *infra*, p. 37.

The opinion of the Court of Appeals states that there was sufficient evidence in the record to sustain the finding ". . . that one of the targets aimed at in thise [sic] demonstrations by the defendant [i. e., the demonstrations at or near the Osborne mines during the 1954-56 organizational campaign] was the Love and Amos contract with TVA which it desired to see cancelled." Appendix B (1), *infra*, p. 28.

In reaching the conclusion that UMW intended harm to Love and Amos, the Court of Appeals cited editorials in the UMW **Journal** (see Plaintiff's Exhibits 12 and 49) in which TVA's policy of buying coal from "get-rich-quick brokers" and non-union mines is criticized. It is pointed out that the editorial in Exhibit 12 also criticizes what UMW considered the Secretary of Labor's ineffective implementation of the Walsh Healey Act as it related to TVA's coal purchases. In addition, the Court of Appeals relied on another article in the UMW **Journal** which listed the names of coal brokers, including Love and Amos, who had sizable contracts with TVA, and in which TVA is again assailed for its ". . . irresponsible policy of awarding contracts to brokers and non-union operators. . . ." Appendix B. (1), *infra*, p. 25. Lastly, the Court referred to the testimony of several witnesses that UMW pickets had carried signs stating that the dispute was with Osborne and Love and Amos.

The Court of Appeals did not find that Love and Amos had been directly involved in the violence. It did find,

however, as its assertion of jurisdiction would indicate, that the presence of violence involving Osborne's operations was enough to justify reliance on the exception to the preemption rule set forth in **Russell** and **Laburnum**.

UMW raised the preemption question in its petition for certiorari filed in the Supreme Court of Tennessee. Appendix C (3), *infra*, p. 40. This petition was denied December 9, 1963. Appendix B (2), *infra*, p. 36.

REASONS FOR GRANTING THE WRIT.

This petition raises an unresolved facet of the recurrent problem of defining the permissible scope of state jurisdiction in the field of labor relations.

The question presented is new. Heretofore, this Court has not decided whether the exception to the preemption rule, as announced in **Russell** and **Laburnum**, authorizes the assertion of state jurisdiction to award damages, or as here, treble damages, to a person who was not involved in the labor dispute, or the attendant violence, on the theory that its contract with the employer was breached.[5]

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[5] Of course the preemption doctrine requires that the conduct of the employer or union be at least arguably subject to Section 7 or Section 8 of the Act. That requirement is met here. While trying to organize Osborne's employees in 1954-56, UMW committed acts that were at least arguably subject to Section 8. This would be so if UMW had done nothing more than try to coerce Osborne employees into Union membership. Under precedents holding that literally "any person" may file unfair labor practice charges, Love and Amos could properly have sought relief before the Labor Board—even though, as the Sixth Circuit was later to hold, see *United Mine Workers of America v. Osborne Mining Co.*, 279 F. 2d 716, 729 (6th Cir. 1960), it was neither a primary nor neutral employer within Section 303 of the Act. *Wine, Liquor and Distillery Workers Union*, 78 NLRB 504, 506 (1948); *Southern Furniture Mfg. Co. v. NLRB*, 194 F. 2d 59 (5th Cir. 1952). In fact, however, Love and Amos did not seek relief before the Labor Board.

The jurisdiction of state courts depends on violence or threats of violence. **Russell** and **Laburnum** so hold. But the question that remains open—and the question presented here—is this: once violence is established, do state courts have unlimited jurisdiction to adjudicate all claims arising out of the labor dispute, regardless of whether the plaintiff was involved in the labor dispute, and regardless of whether his damages were the immediate result of violence. Stated another way, is the jurisdiction of state courts confined to adjudicating the rights of persons who were directly involved in the labor dispute and whose damages resulted from the immediate impact of the violence.

Russell and **Laburnum** did not require an answer to these questions because in each of those cases the plaintiff was the immediate object of the union's violence. Here the facts are different. Assuming, as we must, that UMW committed unlawful acts of violence **toward Osborne**, the fact remains that Love and Amos was neither directly nor indirectly involved in these acts. The violence occurred in the eastern Tennessee coal fields, at or near Osborne's mines, whereas Love and Amos' place of business was some 200 miles away in Nashville. And the damages claimed by Love and Amos were for commissions lost as a result of Osborne's inability to produce enough coal to meet the TVA contract.

These factual nuances, which we consider of crucial importance to the application of the preemption doctrine, did not deter the Tennessee Court of Appeals from making quick work of the jurisdictional defense. Seizing the fact that UMW committed acts of violence toward Osborne, the Court of Appeals was satisfied that the assertion of its own jurisdiction was warranted because ". . . the U. S. Supreme Court has recognized preservation of a right of action under state laws where the

injury arises from acts of violence." Appendix B (1), *infra*, p. 30. **Russell** and **Laburnum** were construed to mean that the presence of violence, in and of itself, and irrespective of any other considerations, was enough to invest state courts with plenary jurisdiction over all phases of labor controversies which otherwise would be within the exclusive jurisdiction of the Labor Board.

The approach of the Tennessee courts disregards significant guide lines from other decisions of this Court which point to the conclusions that even in situations that are exempted from the exclusive jurisdiction of the Labor Board, the states do not have unlimited jurisdiction. The exception to the preemption rule is founded on the rationale that "state jurisdiction has prevailed . . . [in cases of violence] because the compelling state interest, in the scheme of our federalism, **in the maintenance of domestic peace** is not overriden in the absence of clearly expressed congressional direction." **San Diego Building Trades Council v. Garmon**, 359 U. S. 236, 247 (1959). Standing alone, then, violence is not a magic touchstone to the creation of a *carte blanche* authority for state jurisdiction. The criterion is not that states should have power to grant a remedy for every conceivable wrong committed in the course of a labor dispute, marked by violence, but that states should have power to maintain domestic peace.

To the end that domestic peace may be maintained, the states are empowered to adjudicate claims for damages " . . . resulting from the violence." **San Diego Building Trades Council v. Garmon**, supra, at 785, fnt. 6. But after analyzing **Laburnum** and **Russell** in the **Garmon** case, Mr. Justice Frankfurter pointed out that " . . . there is nothing in the measure of damages to indicate that state power was exerted **to compensate for any thing more than the direct consequences of the violent conduct**.

San Diego Building Trades Council v. Garmon, supra, at 785, fnt. 6 (Our emphasis).

Tested against the reasoning in **Garmon**, the Tennessee court's assertion of jurisdiction obviously goes beyond the limits established by the rationale of the preemption rule. Under the criterion of preserving domestic peace, there is no doubt that a Tennessee court could have exercised jurisdiction over the violent phases of the UMW-Osborne controversy. From both a legal and geographical standpoint, the position of Osborne in relation to the union was the same as that of the plaintiffs in **Laburnum** and **Russell**. Osborne, in other words, was enmeshed in the actual violence, and as a direct result sustained damages of a character which could not have been suffered but for the violence. This is not true of Love and Amos. Its claim is based on allegations of lost commissions, due to the interruption of contractual relations. The presence or absence of violence is of incidental importance to this theory of recovery, because the damage claimed could as easily have resulted from peaceful conduct. The enforcement of this type of claim by a state court finds no precedent in any of this Court's decisions dealing with the preemption doctrine.

There is no issue of preserving domestic peace as between Love and Amos and UMW. The offices and employees of Love and Amos were far removed from the turbulence complained of. And the Tennessee courts, in holding the Union liable, did not find that UMW committed acts of violence toward Love and Amos. Although the state courts found that UMW's conduct toward Osborne was intended to harm Love and Amos, the specific findings underlying this conclusion relate not to violence, but to inferences drawn from editorials in the UMW **Journal** and to placards saying that the Union's dispute was with Osborne **and** Love and Amos.

Moreover, the theory on which the Tennessee courts awarded damages is not based on violence. Rather, it is based on the conclusion (which involves an adjudication of the merits of the claim) that UMW had caused the nonperformance of the contract between Osborne and Love and Amos. Regardless of whether Love and Amos was UMW's ultimate object, or one of UMW's objects, the damage sustained because of the interruption of its contractual relationship, is inherently incidental and consequential.

Far from vindicating state power, through the preservation of domestic peace, the action of the state court manifests a possessory interest in awarding damages for "meritorious" claims, irrespective of whether violence is or is not an intrinsic element of the claim. So far as Love and Amos was concerned, peaceful activities of long duration might well have produced the same result. And unlike Osborne's damages, or Russell's or Laburnum's, those claimed by Love and Amos are not of the type in which violence or threats of violence is a necessary ingredient. This again underscores the basic difference between **Russell**, **Laburnum** and this case.

There is one more important difference. As this Court has said, "There is nothing in the measure of damages [in **Laburnum** or **Russell**] to indicate that state power was exerted to compensate for anything more than the **direct consequences** of the violent conduct." **San Diego Building Trades Council v. Garmon**, supra, at 785, fnt. 6. (Our emphasis.) Here, in contrast, the Tennessee courts applied a state statute, Tenn. Code Ann. 47-1706, so as to triple the award of compensatory damages—and, at that, for damages which are in legal contemplation only **indirect consequences** of the violent conduct. If, as we believe, the exception to the pre-emption rule is based on the states' continuing interest in maintaining domestic peace, there

is no warrant for taking jurisdiction over the type of claim asserted by Love and Amos. And a fortiori, there is no "compelling state interest" which would justify an award of three times the claimant's compensatory losses, even if jurisdiction were properly asserted in the first instance.

In some respects this case resembles **Russell** and **Laburnum**, but in other, equally important respects, it resembles **Iron Workers Local 207 v. Perko**, 373 U. S. 701 (1963), and **Plumbers Local 100 v. Borden**, 373 U. S. 690 (1963), where the pre-emption doctrine was applied so as to exclude a damage action from state jurisdiction. At the same time the factual nuances make it distinctly different from all those cases. The question then is which rule controls—the rule of **Russell** and **Laburnum** or the rule of **Perko**, **Borden** and **Garmon**. Obviously the applicable rule lies somewhere between these sets of cases. Just where it lies, whether closer to **Russell** or closer to **Perko**, is what this petition seeks to have the Court answer.

This petition presents a question of substantial importance to the effective administration of the National Labor Relations Act. The issue raised—that of the permissible scope of state jurisdiction—is potentially present in every labor dispute in which there is even a suggestion of union misconduct.

The decision of the Court of Appeals in this case has almost unlimited implications. Under its reasoning, parties who have no concern with a labor dispute are permitted to assert damage claims in state courts, irrespective of their involvement in any acts of violence or misconduct.

The state courts did not find that Love and Amos was involved in the violence. Jurisdiction was asserted here because of the courts' conclusion that an "object" of UMW was to cause the nonperformance of the Love and

Amos-Osborne contract. The pre-emption doctrine becomes a principle of easy avoidance and uncertain application if it depends on a state court's preliminary inquiry into the question of a union's objectives. For the use of such a test inevitably lends itself to facile judgments. To some fact-finders, a single act of misconduct may be enough to "show" that a union's object was to inflict harm on nearly everyone—even those on the outermost periphery of a labor dispute.

All of this conflicts with the goal of achieving a uniform national labor policy. It also conflicts with the rationale underlying the pre-emption doctrine and the exception to it.

CONCLUSION.

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Sec. 8 (b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7; Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

APPENDIX B (1).

(Filed Jul 26 1963, B. J. Boyd, Clerk Court of Appeals.)

Love and Amos Coal Company,
vs.
United Mine Workers of America. } Davidson Law.

Court of Appeals of Tennessee,
Middle Section at Nashville.

Appeal in Error from the Circuit Court of Davidson County, Tennessee,
Honorable Henry F. Todd, Judge.

Filed July 26, 1963.

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Thos. A. Shriver,
Judge.

Affirmed.

Love and Amos Coal Company,
vs
United Mine Workers of America. } Davidson Law.

I.

Opinion.

This is a suit for damages alleged to have resulted from the actions of the defendant, United Mine Workers of America, in inducing Osborne Mining Company to breach its contract with the plaintiff, Love and Amos Coal Company.

The case was tried before Judge Henry F. Todd, in the Third Circuit Court of Davidson County, without a jury and resulted in a judgment in favor of plaintiff on the first count of the declaration for $60,000.00, and on the second count for treble damages under the Tennessee Statutes, in the total amount of $108,072.00, which awards were not cumulative but, under the decree, all payments in satisfaction of either of said amounts is credited against the other.

From this judgment the defendant, United Mine Workers of America, hereinafter referred to as U. M. W., appealed and has assigned errors.

II.

Assignments of Error.

The four assignments of error present the questions to be decided on this appeal and will be discussed in the order presented.

The first assignment is that the Trial Court erred in failing to hold that the Federal Statutes, especially the National Labor Relations Act, as amended, pre-empted the

field and scope covered by this action and, therefore, deprived the State Court of jurisdiction.

The second assignment is that there is no material and substantial evidence to support the judgment.

Under this assignment it is asserted that many of the acts complained of as inducing the breach of contract are not shown by the record to have resulted from the acts of agents or authorized representatives of the defendant union and that the alleged losses were remote and in consequence only of the contractual relationship with Osborne Mining Company, and that there is no material evidence that shows that U. M. W. in seeking to obtain a collective bargaining contract with Osborne Mining Company, intentionally harmed Love and Amos Coal Company.

The third assignment is that the Trial Court erred in awarding judgment in the amount of $60,000.00 as compensatory damages on count one of the declaration.

There are three grounds asserted in the brief of counsel for the defendant as supporting this third assignment which will be discussed hereinafter.

The fourth assignment is that the Court erred in awarding $36,024.00 as damages under count two of the declaration and in trebling this amount under the **Tennessee Treble Damage Statute, Section 47-1706, TCA.** It is asserted that the Treble Damage Statute is not applicable in this case because the contract in question was in parol and called for execution over a two year period and, therefore, was unenforceable under the Statute of Frauds, and that unlawfully inducing the breach of ar unenforceable contract will not support an award of damages under the Treble Damage Statute.

It is further argued that the foregoing Statute is not applicable inasmuch as the damages claimed resulted only

indirectly from the defendant's alleged misconduct and is not shown to have been a result intended by the U. M. W.

III.

The Facts.

We adopt a portion of the statement of facts in the briefs of counsel for appellant, and a portion as stated by counsel for plaintiff. Love and Amos Coal Company is a Tennessee corporation with its principal office and place of business at Nashville, Tennessee, and whose business was the operation of a coal sales agency. It is not a mine operator or coal producer.

The defendant, United Mine Workers of America, is an unincorporated labor organization with many members who are scattered through many of the different states. It functions under a written constitution and maintains its headquarters in Washington, D. C.

The Osborne Mining Company is a Kentucky corporation engaged in the mining of coal at various places in southeastern Kentucky and northern Tennessee.

John Amos was, at the time of the incidents here involved, president of the Love and Amos Coal Company and also an officer of Osborne Mining Company and very active in directing its operations.

In the early 1950's TVA was engaged in a substantial expansion of its coal burning operation notably at the Kingston, Tennessee plant. Mr. Amos, having in mind a contract to supply coal to this plant, sought a supply near the Southern Railway in Northeast Tennessee so as to take advantage of the favorable freight rates to the Kingston plant. Thus, large tracts known as the Packard Lease and the Gatliff Lease located near Jellico, were

acquired in 1953 or early 1954 covering some twenty-five thousand acres of coal lands.

In 1954 plaintiff entered into an oral contract with the Osborne Mining Company under which this company was to mine coal on the above lands located near Jellico, Tennessee. Under this sales agreement to sell the coal so mined by Osborne plaintiff was to receive a commission of 25¢ per ton for such coal sold by it.

In anticipation of fulfilling the contract subsequently entered into with TVA by Love and Amos, plaintiff supplied funds to Osborne Mining Company for purchase of more and larger machinery and as working capital.

In June, 1954, the plaintiff, Love and Amos Coal Company, obtained a contract for the sale of 500,000 tons of coal to the Tennessee Valley Authority, the same to be mined from the lands on which the Osborne Mining Company was operating. Delivery of this coal was to be made within a period of two years from the date of the TVA contract.

In early July, 1954, Osborne began delivering coal to TVA under this contract, part of such coal being mined by it in strip mines located on its leased premises and part of it by its sub-leasees who were operating small underground mines on the same premises. The coal that was delivered on this contract was hauled to the railroad, a distance of several miles, by truckers who were independent contractors, and by these truckers unloaded into tipples located on the railroad and from which tipples it was placed in railroad cars for delivery to the point of destination.

Osborne Mining Company demonstrated its ability to expand and produce greatly increased tonnage in the period prior to 1954 and this tonnage expanded from one or two cars a week in 1950 to approximately a quarter of a

million tons in 1954. It was the understanding between these parties that production would be built up to 13,000 tons a week on the Packard and Gatliff leases and the record shows that it was reasonably estimated that there were many millions of tons of recoverable coal on these properties.

After entering into a contract with TVA for shipment of coal from these leases, designated as the "Osborne Mine," with the coal to be loaded on the Southern Railway at Jellico, the price to be f. o. b. at the loading point, production was commenced under the contract with TVA dated June 4, 1954, which contract was executed by Love and Amos in written form and was accepted by Osborne Mining Company which started out to fulfill its agreement. Osborne shipped substantial volumes of coal for a period of some twenty-one months with Love and Amos receiving a commission of twenty-five cents a ton under this agreement.

It is also shown that in entering on the Packard and Gatliff leases, Osborne Mining Company had an additional understanding with Love and Amos that the TVA contract would be used as a backlog of production as it was built up but that other contracts might be made for supplying

Osborne Mining Company also engaged a number of underground operators to open small mines on these properties so as to obtain additional supplies of coal.

As is argued by counsel for the plaintiffs, that in the absence of interference by the defendant and its members there is nothing in the record to indicate that Osborne Mining Company would have had any difficulty in meeting the requirements of the TVA contract by its production from these leases, in fact it appears that it would probably have increased production considerably above the level required by the TVA contract.

It is pointed out that the events shown in the proof in the present case involve the territory and personnel of District 19 of United Mine Workers of America, a non-self-supporting district, with officers appointed and paid by the International and that it operates with funds from the International organization of Mine Workers.

Late in July 1954 Osborne Mining Company had some labor troubles and it is asserted by counsel for the plaintiff that the campaign of U. M. W. to drive the local brokers and producers from the TVA coal market began at this time.

Exhibit 49 is an editorial in the United Mine Workers Journal for July 1, 1954 which attacks severely the TVA policy of buying coal from non-union sources and from "get-rich-quick brokers", and refers to the first attack on this policy in the Journal for June 1, 1954.

Exhibit 12 is United Mine Workers Journal of February 15, 1955. It indicates an effort on the part of U. M. W. to induce TVA to require U. M. W. contract terms of all their coal supplies.

It is argued by counsel for plaintiff that the purpose of U. M. W. was to stop the flow of non-union coal, at whatever cost and means necessary, and that this purpose is illustrated by many of their publications and actions. For example H. B. Wicks, a member of U. M. W. at the time in question, testified about a U. M. W. meeting in Jellico at which Albert Pass, Secy.-Treas. and acting President of District 19, spoke to the gathering. Wicks testified:

> "Albert Pass said that there was coal being loaded there in Jellico without any royalty being paid on it, he wanted it stopped, regardless of what it took to stop it. All we had to do if we got into anything was look back and he'd be behind us."

There appeared in the Journal of U. M. W. the names of the coal brokers who had secured contracts with TVA with the tonnage, the price and the place of shipment given. The Love and Amos contract was the largest on the published list and the article in the Journal stated, "TVA's irresponsible policy of awarding contracts to brokers and non-union operators is under widespread investigation. . . ."

It appears that soon after the publication of this article in the Journal a large number of men descended on the Southern Railway tipple in Jellico where the coal was being loaded under the Love and Amos contract.

The record indicates that placards and signs carried by U. M. W. pickets advised the public that they had a dispute with Love and Amos Coal Company as well as with Osborne Mining Company and some of the witnesses expressly so testified (Tr. 997, 998, 501).

Thus, there appeared at Jellico on July 23, 1954, a large and threating group of from 50 to 100 men who took over the premises of the loading tipple and the railroad yards. This group of men blocked the path of one of the loaded coal trucks that had come to unload, the door was jerked open, and threats made to the driver. Other trucks that came to the tipple to unload could not get access to it because of the menacing attitude of the group of men and among those present on this occasion were Taylor Maddox and Ed Daniel, two of the U. M. W. organizers. When Mr. Clifford Osborne requested Maddox to let the trucks dump their coal he stated, "No, you will never dump them", and indicated that Osborne would have to sign a Union Contract before the coal could be loaded on the railroad cars.

On July 24, an injunction was obtained against the riotous activities of these men and coal was delivered for a time.

The record is replete with instances that occurred after this such as bullets being fired into a truck that was hauling from the mine into Jellico. In early April 1955, the U. M. W. had a mass meeting in Jellico at which the Acting President of District 19, Albert Pass, along with organizers Daniel and Maddox, addressed the men. Pass is quoted as having told the men to stop the non-union coal that was being shipped out of Jellico regardless of the cost, as hereinabove noted.

On April 6, 1955, the Southern Railway yards in Jellico were overrun by a crowd of several hundred men at which time truck drivers were beaten, trucks loaded with coal that had come in for unloading at the tipples were dumped about the town and, on the same day, this crowd gathered in a long caravan of vehicles and went to the nearby community of Newcomb, where they beat up the operators of the Boots and Cox mine, which mine remained closed until it signed a U. M. W. contract. There were beatings at the Frost mine when Mr. Frost was knocked unconscious and, thereafter, abandoned his operation.

On April 11, 1955, a large crowd of men, some of whom were identified as U. M. W. members, proceeded to the Van Huss mine South of Jellico, where Van Huss was severely beaten and, at the trial in a suit brought by Van Huss against these men, it appears that the defendants were represented by attorneys paid by District 19 of U. M. W.

Two days later a large crowd assembled and went to the Osborne mine on the Packard lease but Mr. Osborne saw them coming and warned his men who abandoned the operation at the time. Roofing nails were strewn along the route that the trucks had to travel in hauling coal, causing an abnormal amount of tire trouble and such activities continued over a long period of time.

On the night of July 14, 1955, the night crew operating on the Packard property in an isolated, wooded, mountain hollow were fired on from the hillside so that they were compelled to turn off their lights and flee for shelter. Afterwards more than a hundred empty cartridge cases were found on the mountain side. Fortunately only one man was struck before he reached cover. Naturally the operators of these shovels were afraid and declined to continue the operation thereafter.

The witness Stott testified that on a visit to District 19's office in Middlesboro the acting president of the District, Albert Pass, asked him for assistance in getting a list of Osborne's employees and then bragged to him that they had stopped Osborne at Jellico and were going to stop Osborne at Gatliff.

The testimony regarding instances of interference and intimidation is voluminous but we do not deem it necessary to go into any further detail concerning it. Suffice it to say that the result of the foregoing activities was that most of the employees of Osborne Mining Company quit because of fear.

Due to the loss of employees, and the inability of Osborne Mining Company to produce coal, Love and Amos was forced to cancel the TVA contract by letter of September 3, 1955, the cancellation to take effect six months after the notice, in accordance with the terms of the contract.

We agree with the conclusions reached by the Trial Judge that there is sufficient evidence in the record to show that the activities complained of were instituted and carried on by and through the defendant United Mine Workers of America in their effort to unionize these mines, and that there is also sufficient evidence to show that the result obtained was not merely an indirect result but

was a part of the plan and purpose of the defendant to close down the operation of Osborne Mining Company unless it agreed to a unionization of its workers and that one of the targets aimed at in these demonstrations by the defendant was the Love and Amos contract with TVA which it desired to see cancelled.

Judge Henry Todd in deciding this case discussed the amount of the damages awarded as follows:

> "Now, Gentlemen, here is what we have; We have what appears to be a proven productivity of the Osborne operation of 13,500 tons per month, multiplied by twenty-four, resulting in 342,000 tons of proven productivity during the period of the TVA contract, less 173,903.5 tons actually delivered, leaves 150,096.5 additional tons that might reasonably have been expected to be produced and delivered for the benefit of the Plaintiff during the period of the TVA contract, multiplied by 25¢ per ton, equals $37,524.12, but I don't think anybody contends for that, because I have been dropping a few decimals here and there. Under the testimony of Mr. Stone, had the entire TVA contract been performed, that is, had the deficiency of 365,000 tons actually been delivered, there would have been an additional expense of $150 per month, or $3600 for the twenty-four months.
>
> Relating that to the shortage of 150,000 tons, then it's reasonable to assume that the extra expense of delivering that 150,000 tons, or rather handling it, would have been $1500. Subtracting that from $37,524 leaves net damages as a result of the termination or non-performance of the TVA contract of $36,024.
>
> Now, Gentlemen, in respect to Count Number I, the plaintiff is entitled to some consideration for the reasonable anticipation of the continuance of its arrangement with the Osborne Company. There has

been considerable proof introduced on the subject. There are many imponderables involved in that. There is, of course, proof that at least one contract for 75,000 tons was declined, was available and declined, on which profit at 25¢ a ton would have been $18,750, if it had been carried out, and that I refer to is gross profit and not net profit on the transaction.

Gentlemen, I have found actual, special damages in the amount of $36,024. On Count Number I, I will allow total compensatory damages of $60,000. On Count Number II, the allowance will be restricted to the actual special damages under the contract, $36,024 times three."

* * * * * * *

"The recovery allowed on Count I is concurrent with the recovery allowed on Count II, not cumulative, so it would simply be $36,024 times three, $108,072.

I did not for this reason, Gentlemen, that actually it is in the nature of special verdict, hopefully that if the Appellate Court should decide that the statutory action does not apply but the common law action does, it might be that we could save re-trying the case."

IV.

Conclusions of Law.

Appellant's first assignment of error is that the trial Court erred in failing to hold that, under the National Labor Relations Act as amended, jurisdiction is in the Federal Courts and that the State Courts have no jurisdiction. They cite **San Diego Building Trades Council v. Garmon, 359 U. S. 236, 3 L. Ed. (2nd) 775,** as authority.

It is to be noted that in the prior Love and Amos case growing out of the same facts as those shown here, and

which case went up from the Federal Court at Knoxville, the **U. S. Court of Appeals, 6th Circuit**, in **279 Fed. 2nd 716**, among other things, stated:

> "If Love and Amos were damaged as result of any activities of defendants directed at it, an adequate remedy exists under state law."

It is pointed out that Federal Labor Laws contain only one section which gives Federal Courts jurisdiction to award damages in a labor dispute, and that is the section on secondary boycott, **29 U. S. C. A., Sec. 187 (b)**.

Even where a party has the right to recover back pay or other damage under the Federal Labor Law, he may still have a right to recover in the State Courts under the rule announced by the U. S. Supreme Court in **United Automobile Workers v. Russell, 356 U. S. 634, 2 L. Ed. 2nd 1030.** There are a number of cases wherein the U. S. Supreme Court has recognized preservation of a right of action under state laws where the injury arises from acts of violence. In this kind of case, at least, there is some recognition by the U. S. Supreme Court that it is essential to preserve the police power of the States to insure that local authorities will be able to protect the rights of life, liberty and property. **United Automobile Workers v. Russell**, supra, **United Construction Workers v. Laburnum Corporation, 347 U. S. 656, 98 L. Ed. 1025**, and **San Diego Building Trades Council v. Garmon**, supra.

We are satisfied that the State Courts have jurisdiction of this cause, therefore, assignment No. 1, is overruled.

Assignment No. 2 is that there is no material and substantial evidence to support the judgment awarded by the Trial Court.

As stated hereinabove, we think there is sufficient evidence to show that U. M. W. is responsible for the activities complained of as was found by the Federal Court

and announced in **United Mine Workers of America v. Osborne Mining Company, 279 Federal 2nd 716**, where it was said:

> "We think the evidence supports the Findings and Conclusions of the District Judge that the defendants were responsible under the common law doctrine of respondeat superior for the acts of their agents and servants. United Construction Workers, etc. v. Laburnum Construction Corp., 1954, 347 U. S. 656, 74 S. Ct. 833, 98 L. Ed. 1025; United Mine Workers of America v. Meadow Creek Coal Co., supra; Lewis v. Benedict Coal Corp., 6 Cir., 1958, 259 F. 2d 346, 352; Brumley v. Chattanooga Speedway & Motordrome Co., 1917; 138 Tenn. 534, 198 S. W. 775."

Assignment No. 2 is overruled.

The third assignment is to the effect that the Trial Court erred in awarding judgment in the amount of $60,000.00 as compensatory damages on count one of the declaration. This is supported by argument concerning the way in which the Court arrived at these figures. In calculating the loss of commissions by Love and Amos with respect to the TVA contract, it is argued that the trial Court having found that after the interference started, Osborne's productive capacity was not sufficient to fulfill the TVA contract, it was error to allow any damages on the Navy and Georgia Power Co. contracts, and especially that it was error not to deduct from the loss on the TVA contract the amount of commissions received by Love and Amos and Bradford Fuel Company on the Georgia Power Co. and Navy contracts.

It is shown that Love and Amos had an agreement with Osborne Mining Company that it would sell the coal produced by that company and it, in turn, agreed to supply coal and allow a commission of 25¢ a ton without any designation of time as to the duration of the agreement

and that each contract procured later on was subject to examination and acceptance by Osborne Mining Company. These later contracts with Georgia Power and the Navy were accepted by it and we fail to see where there was any error in allowing the loss.

Under the common law rule with respect to interference with a contract a cause of action lies for such interference even though the contract is terminable at the will of the parties. **Dukes v. Local Union No. 437, 191 Tenn. 495, 30 Am. Jur., p. 75, Interference, Sec. 26.**

It is further pointed out that all of the Osborne Coal which Love and Amos could ship from Jellico did go to TVA. It was only the coal shipped from Gatliff that went to others and this was after TVA refused to share in the additional cost of freight from Gatliff as against Jellico.

On the whole, we are satisfied with the conclusions reached by the trial Judge with respect to the amounts awarded by him and, therefore, assignment No. 3 is overruled.

Assignment No. 4 is that the trial Judge erred in awarding $36,024.00 damages under count 2 of the declaration and in trebling this amount under the Treble Damage Statute.

It is argued that the Tennessee Treble Damage Statute is not applicable in this case because the contract between Love and Amos and Osborne Mining Company was not to be fulfilled within a year and that, being an oral contract, it was unenforceable under the **Statute of Frauds TCA 23-201.**

It is pointed out by counsel for plaintiffs that this is not a situation where one of the parties to the contract, or one standing in the place of such party, has repudiated the contract or has invoked the Statute of Frauds. To the contrary, representatives of both Love and Amos and

Osborne Mining Company reaffirmed the contract and continued their efforts to comply with it.

The appellant's argument hangs on the authority of **Evans v. Mayberry, 198 Tenn. 187, 278 S. W. (2) 691,** for the proposition that, before there can be a recovery for procuring a breach, the contract must be enforceable under the Statute of Frauds. The **Evans** case and **Watts v. Warner, 151 Tenn. 421,** cited therein with approval, both differ from the present case in that, in each of those cases, one of the parties had actually repudiated the contract which fact was emphasized by the Court.

In the **Watts** case the Court said:

> "No judgment could be based against a defendant for interference with an unenforceable repudiated contract. Certainly after repudiation there were no legal rights under such a contract which could be infringed."

This language was reiterated in the later case of **Evans v. Mayberry.**

We think that the rule stated in **Evans v. Mayberry** and **Watts v. Warner** should not be extended beyond the facts of those cases so as to embrace a case like the one at bar.

Defendant did not plead the Statute of Frauds and there is substantial authority in this State to the effect that if the Statute is to be relied on as a defense it must be specially pleaded. **Citty v. Manufacturing Company, 93 Tenn. 276; Barnes Bros. v. Coal Co., 101 Tenn. 354; Gibson County Bank v. Shatz, 12 Tenn. App. 281. 49 Am. Jur., Statute of Frauds, No. 602,** where it is said that there are many and good reasons for this rule.

While this seems to be conclusive of the matter, we will notice the other arguments made on this question.

Plaintiff's counsel argue that there are sufficient papers in the record to constitute a compliance with the Statute if it is to be invoked. They cite **Cobble v. Langford, 190 Tenn. 385**, where it was said that any number of papers may be connected together to make out a memorandum of sale of realty, sufficient to satisfy the requirement of the Statute of Frauds, and the time of the execution of the memorandum is immaterial. In some instances it may be executed even after suit has been brought. Citing **Hudson v. King, 49 Tenn. 560.**

In **Mills v. Mills, 40 Tenn. 706**, it was said that a memorandum may be supplied by the written answer of a party to an oral contract which shows the existence of such contract in the face of the answer or other pleading in a judicial proceeding and, as is pointed out in **Luskey v. Kiser, 128 Tenn. 705**, a memorandum required by the Statute is not the contract, but written evidence of it.

The Love and Amos-TVA contract is an exhibit in the case setting out the terms concerning the requirements for coal, etc., and Exhibit 18 of Vol. II contains a record of the case of Osborne Mining Company against United Mine Workers of America wherein Osborne Mining Company sets forth in the pleading that it was obligated to fill this exact contract referring to the contract number and acknowledging its binding force and effect.

As to the terms of the contract with respect to consideration which it is argued by defendants is not shown in the documents relied on hereinabove, it was pointed out in **Cobble v. Langford**, supra, citing **Taylor and Williams v. Ross, 11 Tenn. 330**, that it is not necessary that the consideration of the promise be stated in writing in order to maintain an action under the Statute of Frauds.

On the whole we are satisfied that the Treble Damage Statute does apply and that the position of the defendant

with respect to applicability of the Statute of Frauds is not well taken.

It is finally argued under the fourth assignment that **TCA 47-1706** is not applicable in this case since the damages claimed by the plaintiff resulted only indirectly or consequently from the defendant's alleged misconduct and that the proof does not show that it was the intention of the Mine Workers to cause injury or damage to Love and Amos, in the absence of which there can be no liability under the foregoing statute.

Our conclusions stated hereinabove sufficiently answer this contention.

From all the foregoing it results that all the assignments of error are overruled and the judgment of the Trial Court is affirmed.

Thos. A. Shriver,
Thos. A. Shriver, Judge.

Humphreys, J., concurs.

Chattin, J., concurs.

Affirmed.

APPENDIX B (2).

In the Supreme Court of Tennessee.

United Mine Workers of America,
Petitioner,

v.

Love and Amos Coal Company,
Respondent.

Order.

In this case the Court is pleased to deny the petition for certiorari.

Enter this 9th day of December, 1963.

APPENDIX B (3).

In the Court of Appeals of Tennessee.
Middle Division.

Love and Amos Coal Company
v.
United Mine Workers of America.

Davidson Law.
Affirmed.

Judgment.

This cause coming on to be heard upon the transcript of the record from the Circuit Court of Davidson County, assignments of error, reply brief, and argument of counsel, upon consideration whereof the Court is of opinion that in the judgment of the Court below there is no error.

It is therefore ordered and adjudged by the Court that the judgment of the Court below be in all things affirmed and that the cause be remanded to the Circuit Court of Davidson County for the enforcement and execution of the judgment of that Court; and for the collection of the costs of the Court below for all of which let procedendo issue.

The cost of the appeal will be paid by United Mine Workers of America, principal, and E. H. Rayson and R. R. Kramer, sureties, for which let execution issue.

Entered July 26, 1963.

APPENDIX C (1).

In the Circuit Court of Davidson County, Tennessee.

Love and Amos Coal Company
vs.
United Mine Workers of America.
No. 62,427.

Demurrer.

Comes the defendant, United Mine Workers of America, and for demurrer to the declaration filed against it in this cause says: • • •

2. The declaration, and each count thereof, shows that the alleged conduct which has given rise to this controversy was within the proscription of Section 8 (b) (1) of the National Labor Relations Act, 29 U. S. C. A. 158 (b) (1), and, accordingly, as to a claim by plaintiff herein, the National Labor Relations Board has exclusive jurisdiction of the controversy and this Court is without jurisdiction to hear and determine issues arising from such alleged conduct in a tort action based upon the law of the State of Tennessee.

Wherefore, the defendant prays the judgment of the Court hereon.

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APPENDIX C (2).

Additional Plea.

Defendant, for further and special plea to plaintiff's declaration and each count thereof, says that by reason of The Labor Management Relations' Act, 1947, 29 U. S. C. 151 et seq., as amended, and particularly by reason of the rights to employees set forth in 29 U. S. C. 157 and the action proscribed by 29 U. S. C. 158, exclusive jurisdiction of the labor dispute upon which plaintiff predicates its suit is vested in the National Labor Relations Board and this Court is without jurisdiction to hear and determine issues arising from the alleged conduct of defendant in a suit based upon the law of Tennessee.

APPENDIX C (3).

In the
Supreme Court of Tennessee.

United Mine Workers of America,
Petitioner,

vs.

Love and Amos Coal Company,
Respondent.

Petition of the United Mine Workers of America for Writ of Certiorari.

MAY IT PLEASE THE COURT:

I.

Petitioner, United Mine Workers of America (UMW), represents that it is much aggrieved by the action of the Court of Appeals for the Middle District, in affirming the Trial Court's judgment in favor of the respondent, Love and Amos Coal Company (Love and Amos).

Assignments of Error.

First: The Trial Court and the Court of Appeals erred in failing to hold that certain Federal Statutes, and especially that the National Labor Relations Act as amended (29 U. S. C. 151, et seq., and Sections 7 and 8 thereof) preempted the field and scope covered by this action and hence deprived the courts of the several states, including the courts of Tennessee, of jurisdiction over the subject matter here involved (Transcript Vol. A, pages 50, 54, 98, 107, 112).

The basis of this action falls within the purview of the Federal Statute referred to and under the holdings of both of the Federal and the State Courts, the Courts of Tennessee are without the power to award damages in this action. Therefore, the judgment awarded by the Trial Court, and affirmed by the Court of Appeals, cannot be sustained.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

UNITED MINE WORKERS OF AMERICA,
Petitioner,
versus
LOVE AND AMOS COAL COMPANY,
Respondent.
} Number 893.

BRIEF

Of Respondent in Reply to Petition for Writ of Certiorari to the Court of Appeals of Tennessee, Middle Section.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

UNITED MINE WORKERS OF AMERICA,
Petitioner,
versus
LOVE AND AMOS COAL COMPANY,
Respondent.
Number 893.

BRIEF

Of Respondent in Reply to Petition for Writ of Certiorari to the Court of Appeals of Tennessee, Middle Section.

COUNTER STATEMENT OF QUESTION PRESENTED.

Under the Federal Preemption Doctrine, does a State Court have jurisdiction to award damages under State law against the Petitioner Union for its purposeful and intentional destruction of, and interference with, contract rights of Respondent by force and violence?

STATEMENT OF THE CASE.

The statement of the case presented in Petitioner's Petition for Writ of Certiorari recognizes that the damages sought to be recovered in this action were the result of violence perpetrated by Petitioner. We believe that the statement presented in the Petition fairly gives a resume of the case with one exception: It buries to the point of insignificance the fact that the violent acts of the Petitioner were directed at the Respondent and were intended to interfere with, and destroy, the contract rights of Respondent.

The United States Court of Appeals for the Sixth Circuit had held in the prior Federal case, which was reversed and dismissed in that court, that: "If Love and Amos were damaged as the result of any activities of defendant directed at it, an adequate remedy exists under State law. This is not the type of case contemplated by the Labor Management Act of 1947."

United Mine Workers of America v. Love and Amos Coal Company, 279 F. 2d 716, 729.

The issue of purpose and intent directed at Respondent, Love and Amos Coal Company, received prime attention in the State Courts from the very beginning of the action in the Trial Court. This is shown by the following colloquy between the Trial Court and Respondent's Counsel (Tr. Vol. II, pp. 303-304):

> "The Court: Gentlemen, let me see if I can get you to help me on this now. We have had some discussion of the merits of this particular kind of an action, and it seems to me that we agreed that the general rule was that one who suffers what might be termed secondary damages as an incident to a tort, because

of a contractual relationship of the victim of the tort, would not ordinarily have a right to recover those damages from the tort feasor. I believe we agreed that was the general rule.

Mr. Rowntree: Yes, sir.

The Court: And that this case, if it stands, will have to be an exception to that rule. Are we all agreed on that, up to now?

Mr. Rowntree: I think, your Honor, will have to go into the questions of purpose and intent.

The Court: All right, now, that's what I am leading up to. That in the absence of any specific purpose, or intent, then the wrongful acts, if any, of the defendant, producing, if they did, a cessation of operations of Osborne Coal Company, producing, if they did, a resultant damage to the Love and Amos Coal Company, would not give rise to an action by Love and Amos Coal Company, unless, as I said, there was a specific intent to damage the Love and Amos Coal Company. I believe we sort of beat that out on preliminary argument in this case.

Mr. Rowntree: Yes, sir."

The Tennessee Court of Appeals, in its opinion, sustained the finding that there was purpose and intent to interfere with, and destroy, the contractual rights of Respondent, citing facts which clearly support that conclusion. The Petition does not challenge this finding, but, as stated above, relegates that conclusion to a place of insignificance.

ARGUMENT.

This Court has repeatedly stated that where violence is the means by which injury is perpetrated by a Union, a party injured may still sue under State law in a State Court. **United Automobile Workers v. Russell**, 356 U. S. 634, 2 L. Ed. 2d 1030 (1958); **United Construction Workers v. Laburnum Corporation**, 347 U. S. 656, 98 L. Ed. 1025 (1954); **San Diego Building Trades Council v. Garmon**, 359 U. S. 236, 3 L. Ed. 2d 775 (1959); **Plumbers Local 100 v. Borden**, 373 U. S. 690 (1963). In these cases this Court has recognized that the preservation of causes of action under State law, where the cause of the injury is violence perpetrated by a Union, is essential to save the police power of the State and insure that the State will be able to protect the rights of life, liberty and property of its citizens. The case at bar involves what the Court of Appeals of the Sixth Circuit called "a frightening picture of violence and intimidation." **United Mine Workers of America v. Love and Amos Coal Company**, 279 F. 2d 716, at page 721.

The question presented is not new, as contended by Petitioner, but falls well within the principle established in the foregoing decisions.

As stated in **Garmon**, at 359 U. S. at page 247, 3 L. Ed. 2d. page 784:

> "It is true that we have allowed the States to grant compensation for the consequences, as defined by the traditional law of torts, of conduct marked by violence and imminent threats to the public order. United Auto Workers v. Russell, 356 U. S. 634, 2 L. Ed. 2d 1030, 78 S. Ct. 932; United Constr. Workers

v. Laburnum Corp., 347 U. S. 656, 98 L. Ed. 1025, 74 S. Ct. 833."

Laburnum was in 1954; **Russell** in 1958; **Garmon** reiterated the doctrine in April, 1959, and **Borden** in 1963. Congress has not seen fit in these ten years to change this established doctrine; yet, as we understand it, the effort of UMW at this point is to cut away and remove a part of the State Court's jurisdiction in cases of violence, although this Court has given no grounds or justification for such emasculation of State jurisdiction. If a right or interest recognized and protected by State law has been intentionally injured by the violent conduct of a union, the Supreme Court has repeatedly held that the State Court has jurisdiction to remedy such a wrong. It has not attempted to whittle away or narrowly define the type of right or interest thus protected by State court jurisdiction. It has not attempted to distinguish between personal injury, damage to realty, destruction of tangible personal property, or destruction of contract rights brought about by violent conduct. For example, in **United Automobile Workers v. Russell**, 356 U. S. 634, 2 L. Ed. 2d 1030 (1958), damages had been awarded by the State Court for the destruction of contract rights, i. e., Russell's lost wages under his employment contract. (The Supreme Court, in sustaining the award, recognized the possibility that the NLRB, as well as the State Court, might have jurisdiction to award lost pay; yet it held there was no pre-emption.)

The Petitioner emphasizes the rule pronounced by this Court, preserving State causes of action in cases of violence only where the activity of the union is directed at, and intended to affect the plaintiff, and not where the damage to the plaintiff results indirectly and incidentally without the plaintiff being an intended object of the

activity. But this rule cannot apply here to change the result of this case, because here the State Courts have found that the violent activities were intended to destroy Respondent's contract rights. The Petitioner has ignored this finding.

The Sixth Circuit undoubtedly had in mind this very distinction when it said that Love & Amos would have a cause of action under State law with respect to "Any activities of Defendant directed at it." (279 F. 2d 716, at 729.) And the State Courts have found on clear evidence that the activities were directed at the Respondent and its contract.

There is no merit in the Petitioner's contention that because the violence was applied to Osborne Mining Company, the injuries to Love and Amos Coal Company were, therefore, necessarily indirect or consequential. This is for at least two reasons. First, it is elementary that in cases based upon interference or the inducement of breach of contract the defendant's conduct is generally not applied immediately to the plaintiff, but rather to the other party to the contract whose breach of the contract is sought by the wrongdoer. The breach by the other party (Osborne Mining Company) which was sought by Petitioner might have been procured by many different kinds of conduct, including violence. But the fact that the conduct of the wrongdoer is applied immediately to the other party to the contract rather than the Respondent does not make the damages to the Respondent indirect or consequential. The damages here suffered by Love and Amos are no more indirect or consequential than were the damages in the scores of cases sustaining liability for procuring breach of contract found in the annotation on the subject at 126 A. L. R. 2d 1227. This proposition seems elementary and fundamental, and it is inherent in the very nature of an action for procuring a breach of contract.

Second, the damages here are no different than in any other situation where the defendant intends to injure or damage the plaintiff with respect to a particular right or interest. When the intended injury has been accomplished by the defendant, the resulting damage is never held to be indirect or consequential.

Thus it is said in **52 Am. Jur. 373, Torts, Sec. 19**:

> "A duty with which the law of torts is concerned is the duty to abstain from intentional injury to others, and it is a general rule of the common law that a cause of action arises whenever one person, by an act not in the exercise of a lawful right, causes loss or does damage to another with an intent, either actual or constructive, to produce such harm, and without just or lawful excuse or justifiable cause or occasion."

Violence directed at the other party to a contract is a means by which a breach of the contract may be induced and when violence is used, then the defendant who perpetrates such violence may not resort to the argument of justification. As stated in **62 Corpus Juris, pp. 1138-1139, Torts, Sec. 53**:

> "Even though the circumstances do not establish that the interference was malicious, the means employed are operative in preventing the formation of the contract must, in order that liability in tort may not attach, be lawful and proper in nature; and the conduct of the person responsible for that result is a tort if it involves resort to untruthful, fraudulent, **abusive, violent or coercive means.**" (Emphasis added.)

Had there been no concurrent findings by the State Courts that there was an intent to break up Respondent's contract, had the Union not known of the relationship of

Osborne Mining Company, Love and Amos, and TVA, had it not waged its war on TVA and its coal buying policy "and the get-rich-quick" brokers, had its picket signs not attacked Love and Amos Coal Company, had it not pinpointed in its Journal the tipple at which the Osborne coal would be loaded to be delivered to TVA on the Love and Amos contract (and on the very same page, Exhibit 50, reiterated the attack on TVA's "dog-eat-dog policy") and had all of this not been immediately followed by the descent on that very tipple of a mob led by two of its field workers, then the Petitioner might plausibly argue that the harm to Love and Amos was indirect, consequential, and not contemplated by the Union in its lawless conduct. But that is not the case; the facts are to the contrary: the State Courts have so held; and the Union cannot (nor does it in its Petition) plausibly claim that the injury was not foreseeable, contemplated and intended as a result of its action.

In Summary, it is clear, then, that an action for inducing breach of contract is one of the kinds of State actions which may be brought as a result of violent conduct. This court has repeatedly recognized that causes of action arising under State law are preserved and may be tried in State courts where they arise from violent conduct on the part of Unions, regardless of the Federal Labor Law. The Petitioner has offered no explanation, justification or reason for whittling away this rule with respect to this particular kind of property damage or cause of action arising from violence. And its effort to characterize the injury as indirect or consequential cannot be squared with the clear facts and the State Courts' finding.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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